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RUEHVJ/AMEMBASSY SARAJEVO 0456
RUEHSQ/AMEMBASSY SKOPJE 4135
RUEHVI/AMEMBASSY VIENNA 2787
RUEHVB/AMEMBASSY ZAGREB 2960
RUEAWJA/DEPT OF JUSTICE WASHDC
RHEHNSC/NSC WASHDC
RUEHNO/USMISSION USNATO 3284
RUEHVEN/USMISSION USOSCE 2176
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C O N F I D E N T I A L TIRANA 000740

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STATE FOR EUR/SCE (MBENEDICT)
NSC FOR BRAUN

E.O. 12958: DECL: 07/12/2016
TAGS: PREL PGOV PINR PHUM AL
SUBJECT: BERISHA VS. SOLLAKU: ONE ROUND IN A BROADER BATTLE

REF: TIRANA 436

Classified By: AMBASSADOR MARCIE RIES. REASONS 1.4 (B) AND (D).

¶1. (C) SUMMARY. A Parliamentary investigative committee looking into allegations of incompetence and misconduct against Prosecutor General (PG) Sollaku has issued a report claiming evidence of serious misconduct and recommending not only that President Moisiu dismiss the PG, but that criminal proceedings be brought against him as well. Minority members of the committee attacked the constitutionality of the commission itself and other procedural matters, but did not address the specific findings of the majority regarding Sollaku's culpability. Under the rules of Parliament, any measure sanctioning an individual must be voted on by secret ballot; simple adoption of a report, however, can be done by open vote. The opposition has insisted on a secret ballot, and this issue must be resolved before the final vote takes place on July 24. The report must be approved by the full Parliament before being sent to the President, but given the Government's strong Parliamentary majority, the outcome is in little doubt. What is uncertain is President Moisiu's action; most are betting that he will not dismiss Sollaku, in part due to concern over PM Berisha's efforts to consolidate executive power at the expense of Albania's constitutionally-mandated independent institutions, and in this case of his own prerogative over appointment of the PG. The opposition is using this imbroglio as part of a campaign to show that Berisha has not changed and is engaging in a campaign to take control of Albania's independent institutions. Berisha certainly gives them plenty of grist for their mill. We expect the political temperature here to remain pretty high until the situation is resolved. END SUMMARY.

¶2. (SBU) On May 2, Parliament approved the formation of a committee to investigate alleged violations of the law on the part of Sollaku in the execution of his duty as the PG (see reftel). The commission was presented with 83 specific cases to investigate and was given two months to complete its work. It was composed of 13 members, seven from the ruling coalition and six from the opposition. Opposition members tried to block the formation and the work of the committee,

charging that its formation was unconstitutional. The Constitutional Court ruled that the opposition members who brought the suit had no standing in the case.

¶13. (SBU) Despite a boycott of the commission's work by opposition members in the final days, on July 4 it released its final report, which included the expected recommendation that the PG be removed from office. The report also called for prosecution of Sollaku for violations of the law and misconduct. It was read before Parliament on July 11 and must now be voted by the full Parliament (50% plus 1 vote, or 82 members) before being sent to the President who, under the Constitution, has the final say. (As noted reftel, the President may discharge the PG, on the recommendation of Parliament, for violations of the Constitution, for serious violations of the law during the exercise of his duties, for mental or physical incapacity, or for acts and behavior that seriously discredit prosecutorial integrity and reputation.)

¶14. (SBU) Parliamentary rules require that the report be voted by Parliament within 20 days of its presentation, and the final vote was scheduled for July 24. Under the rules of Parliament, however, votes pertaining to individuals must be conducted by secret vote. Based on this, the opposition has demanded that the acceptance vote for the Sollaku report be conducted by secret ballot. The majority has countered saying that this is a procedural matter involving simply the acceptance of a committee report (thus no secret vote) since the President has the final say on whether the PG stays or leaves. The last dispute over secret voting brought Parliament to a standstill. It is likely the opposition has a similar plan in mind in this instance. There are rumors that the opposition is trying to convince some MPs of the majority to vote against the report to embarrass the Government. The opposition is also reportedly seeking to deny a quorum to vote on the report by convincing members in the governing coalition not to come to the floor. Both tactics are unlikely to work.

¶15. (SBU) Charges brought by the governing coalition majority in the commission's report fall into four broad categories:

- Failure to pursue serious criminal cases, or improper suspension of such cases.
- Improper appointment of prosecutors.
- Failure to pursue cases brought by the State Audit Office, members of Parliament, or other sources, including on public tenders (non-criminal cases).
- Failure to disclose wealth/property.

¶16. (SBU) The views of the opposition were not included in the final report and were released separately to the public on July 10. The opposition attacked the constitutionality and functioning of the commission itself, but did not address any of the specific findings of wrong-doing on the a part of Sollaku. The opposition report called on the President to reject the report of the majority on the grounds that the commission did not complete the work it set out to do (not all of the 83 cases brought before the commission were investigated) and failed to complete its work in the allotted time (the final report was released two days after the deadline). The minority also complained that the functioning of the commission did not conform with either Albanian law or internationally-accepted norms.

COMMENT

¶18. (C) IS SOLLAKU GUILTY? It is hard for us to evaluate fully the findings in the commission's report. While many of the charges are grave, serious observers agree that the Government only came close to making a convincing case on two minor charges -- failure to declare properly ownership of an apartment and failure to vigorously pursue a well-known case. Sollaku, in the testimony before the commission, denied all

allegations of wrong-doing. In testimony, an open letter to Parliament, and a 50-page document sent to MPs and the President, Sollaku systematically refuted all charges on legal and factual grounds. (It is worth nothing that some of the charges included in the final report were added during the course of the commission's work, including after the PG testified.) In our view, even if Sollaku committed the errors noted above, these do not meet the rigorous standards spelled out in the Constitution for dismissal.

¶9. (C) WHAT IS BEHIND THE MOVE AGAINST SOLLAKU? The opposition has charged that the move to remove Sollaku is an attempt by the DP to bring one of Albania's constitutionally-created independent institutions under the purview of the Prime Minister, and that it is part of a

larger pattern. In fact, shortly after assuming office, Berisha attempted to put his own person at the head of SHISH (Albanian Intelligence), another appointment controlled by the President. The ruling DP is engaged in efforts to replace two members of the High Council of Justice, which will fill one of the vacancies on the Central Electoral Commission (CEC). With arguably three of the four current members of the CEC already in its pocket, the DP could reverse the SP majority on the CEC created while the Socialists were in office.

¶10. (C) Perhaps the PM is not orchestrating a consistent campaign to undermine independent institutions, but he has handed the opposition a ready-made public relations issue on a silver platter. Berisha and Parliamentary President Topalli say they have told the Socialists that they could name Sollaku's replacement, that the DP has no candidate in waiting. Obviously, the opposition neglects this point in its propaganda. But even if the offer has been made, it is also not surprising if the opposition views it with some skepticism.

¶11. (C) There are two potential ways to interpret the Berisha Government's actions, which skirt the edges of democratic process: The opposition interpretation that his instincts are authoritarian and his chief objective is winning the local elections. Or, the DP version that he is driven to govern Albania effectively, sincerely desires to rid the country of organized crime and corruption, and chafes when bureaucratic hurdles or less-than-efficient prosecutors general impede his progress. Given the win-lose, hard-scrabble Albanian political environment which shaped him, as well as his controlling, even micro-managing personality, it is not surprising the PM is making various efforts to assert his control over different government entities, replacing Socialists with his supporters. Indeed, the SP in its day also liberally exploited the patronage at hand. The Constitutional Court and the President, two institutions provided by the Constitution to balance the power of the Government, have blocked the Government in several instances and appear about to do so in the case of the PG.

¶12. (C) WHAT DOES THE FUTURE HOLD? It is almost certain that Parliament will pass the full report on July 24, sending the recommendation that Sollaku be dismissed and investigated for criminal conduct to President Moisiu. Most, including we, are betting the President will not dismiss Sollaku, either because the charges have not been proven, or because he is concerned with Berisha's intentions, or both. If this happens, the Prosecutor General could continue with his work (with the same non-communication between his office and the PM's as now) and the situation could bump along. The (recently united) opposition has scheduled the first of what may be a series of street protests for July 12 in Tirana's Skenderbeg Square, aimed at highlighting the "undemocratic and heavy-handed tactics" of the ruling party. Even if the demonstration is not exceptionally large, it will certainly raise the political temperature.

¶13. (C) Both we and the EU have told both sides that their approach to politics as a zero-sum game is damaging to their

country and its future prospects. We will be watching the situation very carefully over the coming days to determine whether more vigorous international diplomatic intervention is needed.

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